

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

WINONA FOODS, INC.,

Plaintiff,

v.

Case No. 07-C-1003

Honorable William C. Griesbach

TIMOTHY J. KENNEDY, INC.
d/b/a KENNEDY LOGISTICS & WAREHOUSE,

Defendant.

AFFIDAVIT OF NORMAN BREYER

STATE OF ILLINOIS :
: ss.
COUNTY OF WILL :

Norman Breyer being first duly sworn on oath deposes and says that:

1. He is the CFO of Timothy J. Kennedy, Inc. d/b/a Kennedy Logistics of Illinois (“Kennedy Logistics”) and makes this affidavit on its behalf.
2. Timothy J. Kennedy, Inc. d/b/a Kennedy Logistics of Illinois is incorporated under the laws of Illinois with its principal place of business at Romeoville, Illinois.
3. Kennedy Logistics is an interstate motor carrier but it has no terminals, offices, routes or employees in the State of Wisconsin.
4. The movement described in Plaintiff’s complaint began on June 14, 2007, when Defendant, Kennedy Logistics, was requested by a transportation broker to pick up a shipment of shredded processed cheese at Battaglia Distributing Corp., Inc. (“Battaglia”) at 2545 South

Ashland Avenue, Chicago, Illinois, at 9:00 a.m. on June 19, 2007. A copy of the order confirmation is attached as Exhibit "A".

5. Affiant is informed and believes that the cheese was processed by Battaglia from large blocks of cheese manufactured by the Plaintiff, Winona Foods, Inc., and shipped to Battaglia by some unknown mode of transportation that did not involve Defendant, Kennedy Logistics.

6. At the time of the pickup, Battaglia issued a Bill of Lading, a memorandum of which is attached to this affidavit as Exhibit "B". This memorandum lists Winona Foods as "consignee" and Battaglia Distributing as the shipper.

7. Battaglia loaded the shredded cheese into boxes, loaded them on pallets and stacked those in a refrigerated trailer provided by Defendant, Kennedy Logistics.

8. On inspection in Illinois, Defendant, Kennedy Logistics, representatives in Romeoville, Illinois, observed some shifting of boxes in the trailer as a result of Battaglia's inadequate loading procedures or inadequate packaging tensile strength.

9. The trailer was delivered to the Burlington Northern/Santa Fe Railroad Company at Willow Springs, Illinois, on June 19, 2007, for loading on railroad flatcars as an intermodal shipment.

10. The railroad transported the refrigerated trailer to Los Angeles, California, where it was picked up on June 22, 2007, by Defendant, Kennedy Logistics', driver whose name is Ralph Gongora.

11. On Friday, June 22, 2007, Defendant, Kennedy Logistics' driver attempted delivery at the loading dock of Winona Foods' customer, Real Mex Foods, Inc., ("Real Mex") in Buena Park, California. The load was properly refrigerated at the time of delivery.

12. Defendant's driver was instructed by Real Mex to physically unload the trailer box by box and leave the product on their unrefrigerated dock.

13. Although Defendant, Kennedy Logistics' driver requested assistance from Real Mex, the dock personnel refused to assist him as he manually transferred a part of the load to the loading dock.

14. Real Mex closed for the weekend at 5:00 p.m. and Defendant, Kennedy Logistics' driver, took the remainder of the load for storage over the weekend.

15. On Monday, June 25, 2007, Kennedy Logistics' driver returned to Real Mex which received the balance of the load and made other arrangements for disposal.

16. A dispute has arisen between the Kennedy Logistics' driver and the employees of Real Mex as to whether the load was properly refrigerated at the time of delivery. That discovery was made in California.

17. Defendant, Kennedy Logistics, has no contractual relationship with Plaintiff, Winona Foods. Kennedy Logistics contracts were either with Genco, which placed the order, or Battaglia Distributing of Chicago, Illinois, which issued the Bill of Lading.

s/ Norman Breyer

Norman Breyer

Subscribed and sworn to before me
this 28th day of March, 2008.

s/ Jamie Altman

Notary Public, State of Illinois

My commission expires 10/19/11

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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Dated this 28th day of March, 2008.

s/ Thomas L. Schober
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Timothy J. Kennedy, Inc.
d/b/a Kennedy Logistics & Warehouse

POST OFFICE ADDRESS:

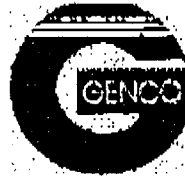
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Jeff - ext. 2014
 Crystal - ext. 2005
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gfs@genco.com



Genco
 1400 Lombardi Avenue
 Suite 204
 Green Bay, WI 54304

Bill To:

Genco
 1400 Lombardi Avenue
 Suite 204
 Green Bay, WI 54304

Carrier: Kennedy Transportation

Phone #: 800-323-3734

Fax #: 815-293-3701

ATTN:

Genco Shipment #: GN-20070614-6

PO #: 79373

BOL #: FM0600002429

Trailer Type: Temperature Controlled 53'

Product Type: Cheese

Hazardous Material: NO

Lift Gate: NO

GENCO SHIPMENT & CARRIER PRO # MUST APPEAR ON ALL BILLING

Weight: 40,000

Pallet: 20.00

Special Req: Pallet Exchange Required

Pickup 1
 Battaglia Distribution
 2545 South Ashland Ave

312-738-1111

Pickup #:

Hours of Operation:

Requested Ship Date: ~~06/18/2007~~ 6/19/07 @ 0900

Chicago, IL 60608

Notes:

Stop 1
 Real Mex Foods
 7150 Village Drive

714-523-0031

Hours of Operation:

Requested Delivery Date: 06/21/2007 12:00:00

Buena Park, CA 90621

Notes:

Pay Summary:

FLAT RATE: \$2,550.00
 FUEL SURCHARGE: \$0.00
 OTHER: \$0.00

TOTAL: \$2,550.00

Accessorial Charges:

TONU: \$0.00
 Detention at Origin: \$0.00
 Detention at Dest: \$0.00

Driver Unload/Sort/Segregate: \$0.00
 Lumper: \$0.00
 Special Handling: \$0.00
 Preload/Drop: \$0.00

1. Carrier agrees to the following conditions with regards to the tender above.

2. All Trailers Must Be Clean Of Debris And Odor Free

3. Load Locks And Or Seals Required

4. All Fuel And Extra Drops (If Applicable) Are Included In The Above Rate

5. Carrier agrees to provide pickup updates within 4 hours of arrival - to include all Pick up and Delivered. If status updates are not provided as prescribed a fee of \$25.00 will be taken out of the carrier's payment listed above.

6. All equipment which would be probable of return to carrier to be immediately communicated to GENCO by Carrier.

7. All Payments / Receipts Must Be Handled Through Our Office.

8. An accessoril Charges Must Be Pre-Approved & Signed With Receipt & Paid. Failure To Do So Will Result In Non-Payment Of Such Charges.

9. Carrier agrees To provide immediate notice Of Any Addressed Changes Prior To incursion. For Those Not Listed On The Tender Above And The Written Approval From Genco For Such Charges Will Be Needed In Order For Payment.

10. All Loads Must Be Completed Within 48 Hours Status Updates Provided By The Carrier. If A Carrier Has Not Provided Appropriate Load Completion Date And Signed Bill Of Lading, Payment Will Not Be Made Until Such Items Have Been

Received By Genco

11. If late delivery with no communication, Carrier will be charged \$50.00

12. Carrier must Fax The Pod / Bol To 820-593-8960 (Referencing The Above Shipment ID) Within 24 Hours Of Delivery

Payment: Requires Bol / Delivery Receipt / Signed Rate Confirmation Sheet

If Carrier fails to provide POD within 24 hours as requested, a fee of \$25.00 will be taken out of the Carrier's payment listed above.

13. Payment Terms are 30 Days From Receipt Of Invoice At Genco

14. Insurance: Carrier Providing Transportation Services To Genco Must, at a minimum, Of The Following

General Liability: \$1,000,000 Minimum Limit Combined Single Limit Bodily Injury And Property Damage Per

Automobile Liability: \$1,000,000 Minimum Limit Combined Single Limit Bodily Injury And Property Damage

Worker's Compensation: \$100,000 Employee's Liability Or Sickness Limits. Must Be In Full Compliance With The Laws Of All States And Provinces In Which Transportation Services Are Performed.

Cargo: \$100,000 Minimum Limit Per Vehicle With Coverage For Full Actual Value Unless A Higher Level Of Liability Per Shipment Is Specified

15. Carrier warrants that it holds any and all necessary licenses, permits and any other required approvals from the US Department of Transportation, and/or any other federal, state local or provincial government to perform services under this

agreement

16. In addition the carrier warrants that its employees, vehicles, drivers and other personnel are qualified and are and will be in compliance with all rules, regulations, orders or requirements from any transportation authority. Carrier will not accept a

shipment from GENCO or its customer if that shipment would require Carrier or any of its agents, employees or subcontractors to exceed or violate any speed or safety laws or national regulations.

17. Carrier warrants GENCO to reduce payments made to them by up to \$25.00 per load where they have not provided timely status updates within a week of occurrence, and up to \$50.00 for late pickup of delivered

DRIVER NAME:

TRK#:

TLR#:

DRIVER CELL#:

SIGNATURE:

DATE:

CARRIER PRO #:

EXHIBIT

"A"

